

**U.S. - JORDAN FREE TRADE AGREEMENT
RULES OF ORIGIN MANUAL**

**USAID AMIR PROGRAM
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Chapter 1: Introduction

- 1.1 The Jordan-U.S. Free Trade (FTA) Agreement will eliminate custom duties on nearly all goods traded between the two countries. However, not every export of Jordan or the U.S. will qualify for this duty-free treatment. Article 2 of the FTA provides that Jordan and the U.S. will eliminate existing customs duties only on **“originating goods of the other Party.”**
- 1.2 The definition of “originating goods” is found in Annex 2.2 to the FTA Agreement. An Arabic translation of Annex 2.2, which is entitled “Rules of Origin,” appears at the end of this manual.
- 1.3 Origin rules are used to determine what country an imported product is from, where two or more countries contribute materials, or labor, or both to its production. In the context of a preferential trade agreement like the FTA, a rule of origin is designed to ensure that the benefits of the agreement accrue to Jordan and the U.S.
 - 1.3.1 The FTA rules of origin are intended, in particular, to prevent third country producers from simply passing their goods through the U.S. or Jordan to obtain the duty-free benefits of the agreement. The rules are designed to ensure that only those products that have undergone significant manufacturing in the U.S. or Jordan (and therefore reflect U.S. or Jordanian labor and investment) will enjoy duty-free treatment when exported to the other country.
- 1.4 The FTA rules of origin are of a type that is new in Jordan Customs’ practice. They are unlike the origin rules that Jordan applies under the EU Association Agreement or the various Arab region bilateral free-trade agreements. However, the FTA origin rules are well known to U.S. Customs. The U.S. Customs Service has used similar rules for more than 25 years to administer its country-of-origin labeling law, as well as various U.S. trade preference programs such as the U.S. Generalized System of Preferences, the Caribbean Basin Initiative, the Andean Trade Preference program and the Qualified Industrial Zone (QIZ) program.
- 1.5 This manual describes that U.S. practice as found in U.S. Customs published rulings, decisions and publications. It is intended to provide Jordan Customs Department, brokers and importers with explanation and guidance on application of the FTA origin rules.
- 1.6 This manual was written for use of the Jordan Customs Department and Jordanian brokers and importers. Accordingly, throughout the manual we describe the FTA requirements from the perspective of an import into Jordan. For that reason, we describe the production processes that must occur in the exporting country, the United States, in order to qualify for duty-free import into Jordan. Of course, the same requirements would apply to a Jordanian exporter who wishes to export to the United States under the FTA.

Chapter 2: Scope of Annex 2.2. "Rules of Origin"

2.1 The FTA origin rules set out in Annex 2.2. to the Agreement, have three major components: a *qualitative* definition of origin (the "wholly obtained"/"substantial transformation" tests), a *quantitative* definition of origin (the 35% domestic content requirement) and a "direct transport" requirement.

- ◆ Wholly Obtained/Substantial Transformation Requirement. To qualify for duty-free treatment under the FTA, the goods imported into Jordan must be made entirely in the U.S. or, if any third-country materials are used, those materials must be "substantially transformed" into U.S. origin products as a result of a U.S. manufacturing or processing operation. A substantial transformation requires a change, as a result of manufacturing or other processing, in certain essential qualities of a good. The wholly produced and substantial transformation tests will be further discussed in Chapters 3 and 4.
 - ◆ The FTA has a special set of "substantial transformation" rules for textile and apparel products. These special rules are discussed in Chapter 5.
- ◆ 35% Domestic Content Requirement. The FTA requires that 35% of the customs value of the imported product must be attributed to U.S. origin materials and/or to U.S. direct costs of processing. However, the cost or value of Jordanian-origin materials incorporated in the imported product can be counted, but only up to 15% of the customs value of the good. This domestic-content requirement is discussed in Chapters 6 to 8.
- ◆ Direct Transport Requirement. To ensure that U.S. qualifying goods are not mixed with non-qualifying goods while en route to Jordan, the FTA contains a "direct transport" requirement. This will require proof that the goods are shipped directly from the U.S. to Jordan, with certain exceptions. The direct transport requirement and permitted exceptions are discussed in Chapter 9.

2.2 In addition to the origin rules themselves, Annex 2.2 sets out procedures to be followed by Jordan and U.S. Customs when they process importers' claims for duty free treatment. The annex also includes declaration and recordkeeping requirements for importers. These also are new to Jordan Customs' practice. They are described in Chapter 11.

Chapter 3: Wholly Obtained or Produced Goods

1. "This Agreement shall apply to any article if:
 - (a) that Article is wholly the growth, product or manufacture of a party...[.]
- . . .
3. For purposes of this Agreement, the expression "wholly the growth, product or manufacture of a Party" refers both to any article which has been entirely grown, produced or manufactured in a Party and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in a Party, as distinguished from articles or materials imported into a party from a non-participating country, whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the Party."

Definition

- 3.1 Goods that are "wholly the growth, product or manufacture of a Party" are those goods that produced in a single country solely from materials from that country. All manufacturing or processing operations required to produce the good must take place in a single country AND all raw materials used in the production (including those raw materials used to make parts and components incorporated in the final product) must come from that same country.
- 3.2 Goods that contain even the smallest percentage – even 1% - of parts, materials, labor from a second country cannot be considered wholly the growth, product or manufacture of a single country.
- 3.3 In general, goods that might be considered "wholly the growth, product or manufacture" of a single country are limited to natural products (animal, mineral, agricultural) that are taken from a single country.
- 3.4 The FTA does not provide additional description of the types of goods that might be considered "wholly the growth, product or manufacture" of a single country. However, guidance can be found in the draft rules being developed by the World Trade Organization. Although these are not yet binding on U.S. Customs or Jordan Customs in applying the FTA, they do reflect a general international consensus on what goods might be considered "wholly produced or manufactured" in a single country, and therefore might be considered instructive.

Examples

Live animals born and raised in a single country

This category includes live all animal life, from bacteria and viruses to mammals, birds, fish, reptiles, *etc.*

This category would not include an animal is born in one country, and partially “raised” in another, such as sheep or cattle born on the northern U.S. border and pastured during the summer in Canada.

Animals obtained by hunting, trapping, fishing, gathering or capturing in a country

This category includes all animals obtained from the wild, whether live or dead, and whether or not born and raised in that country.

It would include fish taken from a country's territorial seas. A country's territorial sea is generally defined as the area within 12 miles of the coastline of the country under the UN Convention on Law of the Sea.

Products obtained from live animals in a country

This would include, for example, milk, eggs, honey, and wool. This category would not include such natural products that are processed in any way, such as prepared meat products.

Plants and plant products harvested, picked or gathered in a single country

This would include, for example, plants, fruits, trees, and flowers.

Mineral Products

This category includes minerals taken from a country's subsoil (including its seabed or territorial waters), such as crude oil, natural gas, stones, sands, clay, metallic ores, and rock.

If the minerals are taken from outside the country's territorial waters, the country of origin of the mineral is the country which, under international law, has the right to work that soil or subsoil

The rights of a country to areas outside territorial waters are defined by the UN Convention on Law of Sea.

- ◆ Territorial seas are 12 miles of seas within coast of the country
- ◆ Exclusive Economic Zone – 200 nautical miles from coastline of the country.
The country has exclusive rights to exploit natural resources of water, seabed and subsoil

Goods Produced from Wholly Obtained or Produced Goods

This category would include goods that are produced or obtained in a single country using only products obtained in the same country.

This is not a large category, as most modern manufacturing/processing operations include some element of foreign materials.

Generally, this category would include products of basic processing operations only.

Scrap, Waste, and Used Goods

This category would include scrap and waste from manufacturing and processing operations and used articles which are fit only for recovery of raw materials or disposal.

Summary

- 3.5 The definition of goods “the growth, product or manufacture of a Party” is limited. It includes only those goods whose content is 100% from a single country. Very few, if any, U.S. manufactured goods will not include at least some foreign (non-U.S.) element. The same is likely true of Jordan manufactured products. Accordingly, other than raw agricultural products, live animals or unprocessed animal products (frozen meat, eggs, etc.), and minerals, there will be few imports from the U.S., or exports from Jordan, that will properly qualify as “wholly the growth, product or manufacture” of a Party to the agreement.

Chapter 4: Substantial Transformation

“1. This Agreement shall apply to any article if:

- (a) that article...is a new or different article of commerce that has been grown, produced, or manufactured in a Party

...

4. For the purposes of this Agreement, “country of origin” requires that an article or material, not wholly the growth, product or manufacture of a Party, be substantially transformed into a new and different article of commerce, having a new name, character or use distinct from the article or material from which it was so transformed.”

Overview

- 4.1 The “substantial transformation” test is intended to identify the country of origin of an imported product when the product is manufactured in more than one country and/or incorporates materials, parts, or components from more than one country. More particularly, the test is intended to identify that country where the most significant manufacturing or processing operation took place; that is, the country in which the imported product was given its essential character.
- 4.2 Under the FTA, the origin of such a product is that country in which it was last substantially transformed into a new and different article of commerce with a name, character or use different from all foreign materials, parts, components used in its manufacture.

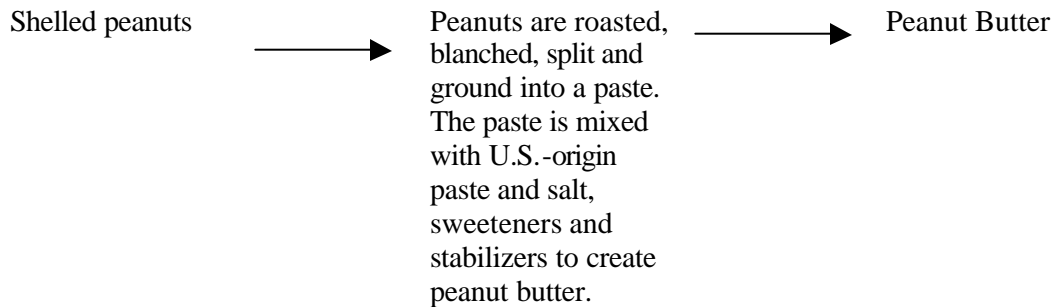
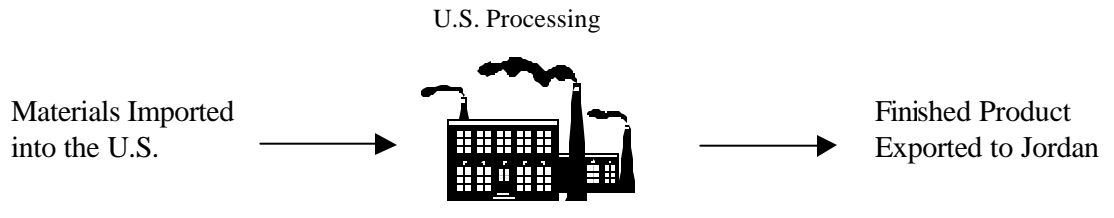
“Name, Character and Use” Test

- 4.3 Whether a product undergoes a change in name, character or use that is sufficient to constitute a substantial transformation is highly dependent upon the particular manufacturing operation involved. In all cases, it is a question of degree; the transformation or change to imported materials brought about by manufacturing or other processing must be “substantial.” Over a number of years, U.S. Customs and the U.S. trade courts have developed general principles that can be used for guidance in applying this test. These are as follows:

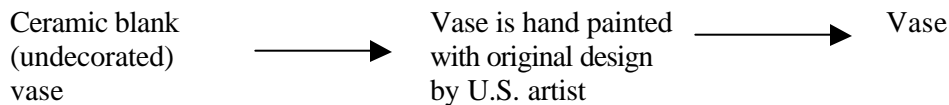
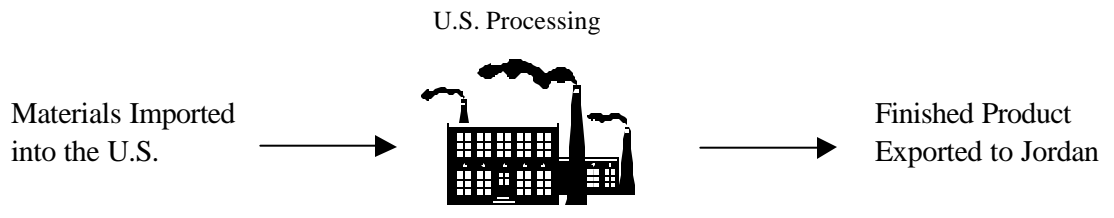
New Name

- 4.4 A change in name requires a change in the commercial designation or commercial identity of the product. This might be shown by trade literature, catalogues, or brochures, for example.
- 4.5 Both Jordan and the United States use the Harmonized System as the basis for their respective tariff codes. The Harmonized System is a system of product classification based largely on commercial designation.

Accordingly, a change in the tariff classification of a product (particularly at the 4-digit level) can be persuasive evidence of a change in name.



! This is a substantial transformation. As a result of U.S. processing, the imported peanuts undergo a change in name, to peanut butter.



! This is NOT a substantial transformation. There is no change in name; the name of the imported material (vase) remains the same despite the U.S. processing.

- 4.6 Although the origin test is stated in the alternative (a change in name OR character OR use), in practice a change in name alone is generally not considered sufficient to constitute a substantial transformation. In practice, it has been necessary to show that the change in name is accompanied by a change in character or use of the article.

New Character

- 4.7 A change in the character or use of the article as a result of a manufacturing or processing operation are generally considered the strongest indications of a substantial transformation.
- 4.8 A change of character requires that the manufacturing or processing operation results in a change to the physical aspects of a product, such as a change in its physical dimensions (*e.g.*, size, weight, shape), chemical composition, or physical qualities (*e.g.*, strength, hardness).
- 4.9 Cosmetic or surface changes, such as painting, cleaning, lacquering, zinc-plating, or waterproofing, which do not significantly affect the physical dimensions or qualities or chemical composition of the product, are usually not considered sufficient to constitute a substantial transformation.

Examples

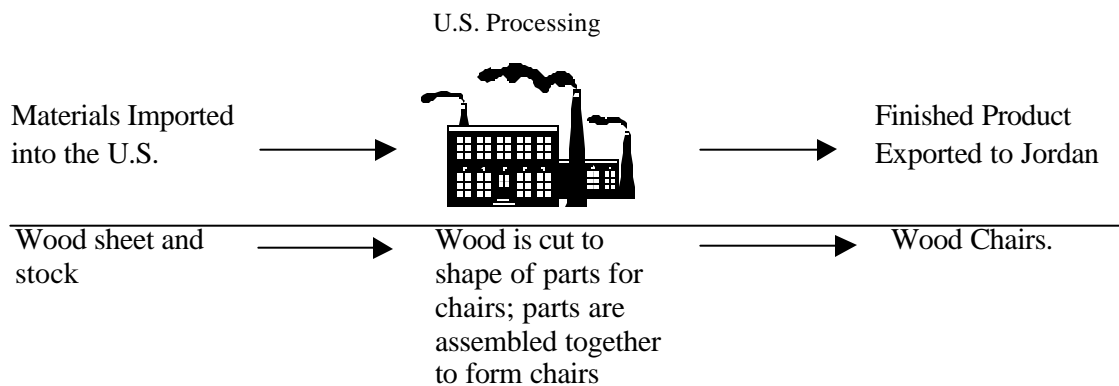
1. A hand-carved totem pole imported from Indonesia is partially painted in the United States, and attached to a base. The totem pole is NOT substantially transformed as a result of the U.S. processing. The partial painting is a minor operation that does not change the physical identity of the imported article.
2. Gold-plating imported jewelry does not constitute a substantial transformation.

New Use

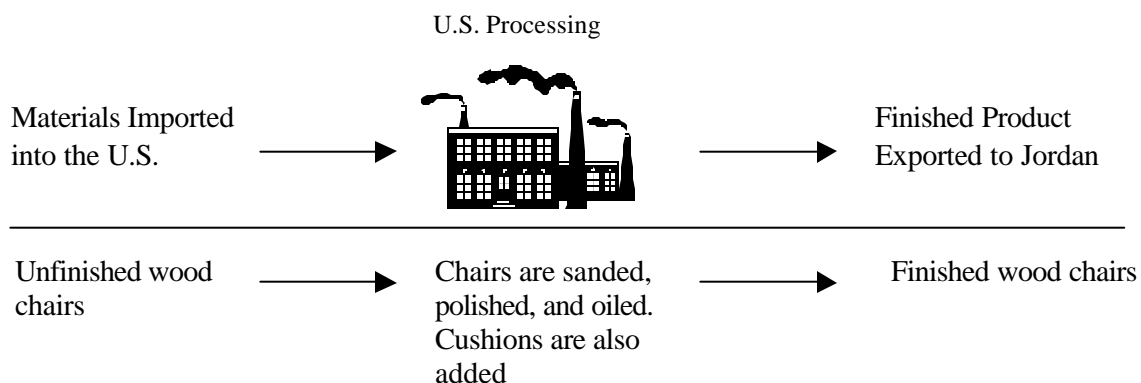
- 4.10 A change in use of an article will generally be considered sufficient to constitute a substantial transformation if the manufacturing or processing operation:
- (1) changes a product that has one use into a product with a different use;
 - (2) changes a product with many potential uses into a product with one specific use; or
 - (3) narrows the range of possible uses of a multiple-use material or product.
- 4.11 Cutting or bending a material (whether glass, steel or wood) to a defined shape or pattern is generally considered a change in use sufficient to constitute a substantial transformation. For example, cutting and shaping plywood sheet into furniture parts (drawers, cabinets, *etc.*) would be considered a substantial transformation. Similarly, cutting and shaping a glass sheet into the form of a windshield for a car would be considered a substantial transformation.
- 4.11.1 These are illustrations of the general principle that converting a multiple use article (a wood or glass sheet) into one suitable for a specific use (a

furniture part or a windshield) will generally constitute a substantial transformation.

- 4.11.2 On the other hand, simply cutting a material to length or width is generally not considered a sufficient change in use. A material that is simply cut to length or width remains suitable for multiple uses. For example, cutting a steel pipe to a particular length would not be considered a substantial transformation; however, bending a steel pipe to a particular shape would be considered a substantial transformation.



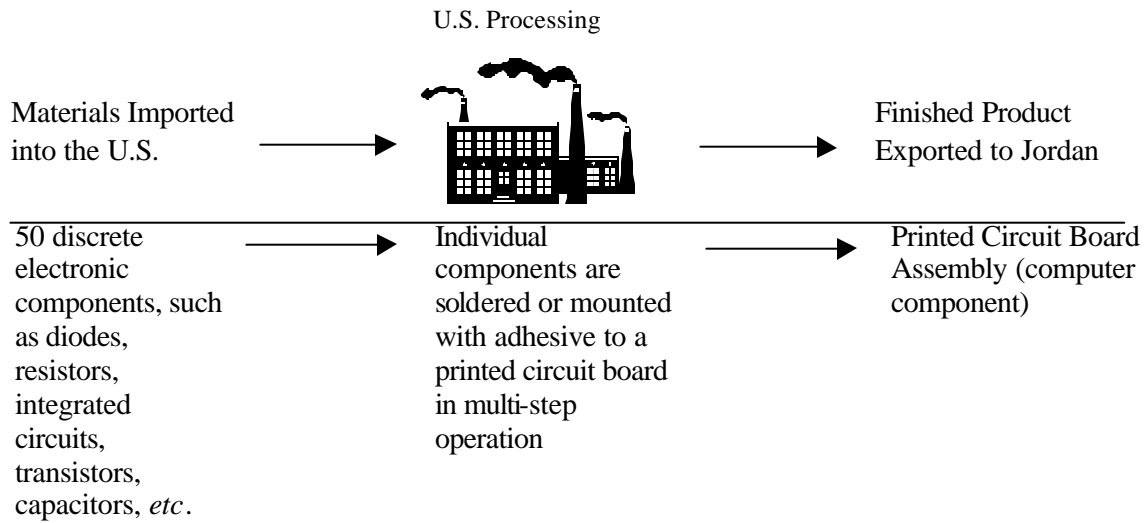
- ! This is a substantial transformation. As a result of the U.S. processing, the imported wood has undergone a change in name (wood sheet and stock to “chair”), character (wood sheet has been cut and shaped to specific physical dimensions), and use (from a multi-use raw material to a product with a specific use).



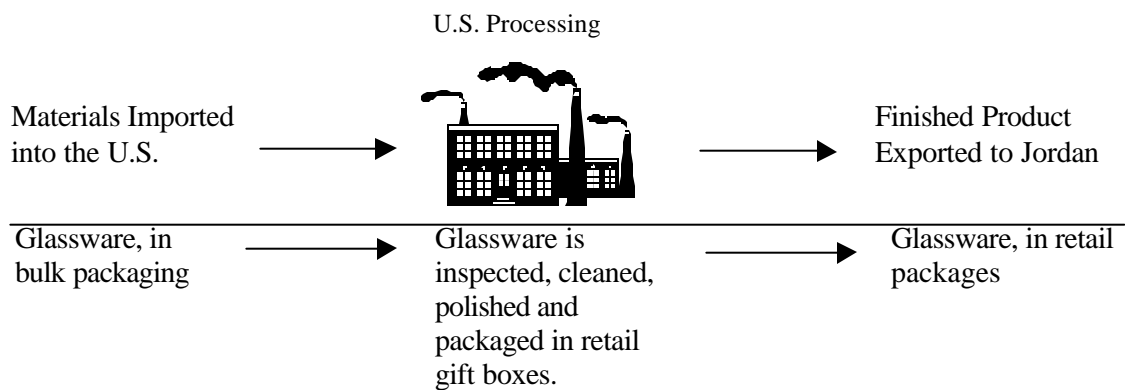
- ! This is NOT a substantial transformation. The finished product has the same name as the imported material (“chair”); the operations performed do not significantly alter the physical dimensions or physical attributes of the imported chair; and the imported product does not undergo a change in use.

Assembly Operations

- 4.12 Some of the more difficult origin questions arise in connection with assembly operations. These are operations in which two or more components or subassemblies are joined to each other to form a new product. Examples of typical assembly operations might include assembly of wood parts to form chairs, tables or other furniture items; assembly of electronic components to form circuit boards for computers or other electronic appliances; or assembly of machines or vehicles from parts.
- 4.13 In some cases, an assembly may be simple but nevertheless result in an article with a new name, character or use. For example, the assembly of imported frames to U.S.-origin lenses may result in an article with a new identity – sunglasses – but this operation cannot be considered “substantial.”
- 4.14 In U.S. Customs’ practice, assembly operations will not result in a substantial transformation unless the operation is “complex and meaningful.” Whether an operation is complex and meaningful depends upon the nature of the operation. The factors that might be considered include the time, cost and skill involved, the number of components assembled, the number of different operations, and attention to detail and quality control.
- 4.15 To ensure that simple assembly operations are not used to qualify goods under the Free Trade Agreement, Annex 2 of the Rules of Origin Annex provides:
- “2. No article shall be considered a new or different article of commerce under this agreement and no material shall be eligible for inclusion as domestic content under this Agreement by virtue of having merely undergone (a) simple combining or packaging operations or (b) mere dilution with water or with another substance that does not materially alter the characteristics of the article or material.”



- ! The U.S. processing substantially transforms of the imported components. The process involves considerable time to complete, a large number of components and a number of distinct skilled operations. The finished product (printed circuit board assembly) has a electronic function or use different than any of the individual components, as well as a different character and name.



- ! This is NOT a substantial transformation. The U.S. processing is a simple packaging operation that does not change the name, character or use of the glassware imported in bulk.

Requirement of a “New and Different Article of Commerce”

- 4.16 The importance of this requirement of a “new and different article of commerce” relates to the concept of “double substantial transformation.” This will be discussed below (Chapter 7).

Origin of Citrus Juices

4.17 A footnote to Annex 2.2. provides:

“For the purposes of this Agreement, the processing of goods imported under Harmonized Commodity Description and Coding System (HS) subheading 0805 into goods classified under HS subheadings 2009.11 through 2009.30 does not satisfy the requirements of [the substantial transformation test].”

4.18 Subheading 0805 of the Harmonized System is the tariff code for fresh citrus fruit (*i.e.*, oranges, lemons and limes, grapefruit). Subheadings 2009.11 through 2009.30 are the tariff codes for citrus juices.

4.19 Therefore, the meaning of this special rule is that the production of citrus juice from fruit may not be considered a substantial transformation. Accordingly, orange juice processed in the United States from Mexican-origin oranges, for example, would not qualify for duty-free treatment when exported to Jordan. In effect, the rule defines the country of origin of a citrus juice as the country where the fruit is grown.

Chapter 5: Origin Rules for Textile and Apparel Products

9. Textile and apparel products

- (a) General Rule. A textile or apparel product shall be considered to be wholly the growth, product or manufacture of a Party, or a new and different article of commerce that has been grown, produced or manufactured in a Party; only if
- (i) the product is wholly obtained or produced in a Party;
 - (ii) the product is a yarn, thread, twine, cordage, rope, cable, or braiding, and
 - (1) the constituent staple fibers are spun in that Party, or
 - (2) the continuous filament is extruded in that Party;
 - (iii) the product is a fabric, including a fabric classified under chapter 59 of the Harmonized Commodity Description and Coding System, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that Party; or
 - (iv) the product is any other textile or apparel product that is wholly assembled in that Party from its component pieces.
- (b) Special Rules.
- (i) Notwithstanding subparagraph (a)(iv), and except as provided in subparagraphs (b)(iii) and (b)(iv), whether this Agreement shall apply to a good that is classified under one of the following HTS headings or subheadings shall be determined under subparagraphs (i), (ii), or (iii) of subparagraph (a) as appropriate: 5609, 5807, 5811, 6209.20.50.40, 6213, 6214, 6301, 6302, 6304, 6305, 6306, 6307.10, 6307.90, 6308, or 9404.90
 - (ii) Notwithstanding subparagraph (a)(iv), and except as provided in subparagraphs (b)(iii) and (b)(iv), this Agreement shall apply to a textile or apparel product which is knit to shape in a Party.
 - (iii) Notwithstanding subparagraph (a)(iv) this Agreement shall apply to goods classified under HTS heading 6117.10, 6213.00, 6214.00, 6302.22, 6302.29, 6302.52, 6302.53, 6302.59, 6302.92, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85, or 9404.90.95, except for goods classified under such headings as of cotton or of wool or consisting of fiber blends containing 16% or more by weight of cotton, if the fabric in the goods is both dyed and printed, when such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moiréing.
 - (iv) Notwithstanding subparagraph (a)(iii), this Agreement shall apply to fabric classified under the HTS as of silk, cotton, man-made fiber, or vegetable fiber if the fabric is both dyed and printed in a Party, and such dyeing and printing is accompanied by 2 or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moiréing.
- (c) Multicountry Rule. If the application of this Agreement cannot be determined under subparagraphs (a) and (b), then this Agreement shall apply if:
- (i) the most important assembly or manufacturing operation occurs in a Party, or

- (ii) if the application of this Agreement cannot be determined under subparagraph (c)(I), the last important assembly or manufacturing occurs in a Party.

Structure of Textile and Apparel Rule

- 5.1 The FTA has specific rules for determining the country of origin of textile and apparel products. These rules for textile and apparel products are to be applied in place of the “name, character and use” test for other products that is described above.
 - 5.1.1 These rules are similar to the rules that the U.S. Customs Service applies for administration of quotas and visas under the Multi-Fibre Arrangement. They are also similar to the rules that U.S. Customs applies to determine eligibility of products for duty-free entry under the U.S.-Israel Free Trade Agreement.
- 5.2 The purpose of the special textile rules is to ensure that minimal assembly or pass-through operations will not qualify a product for duty-free treatment under the agreement. Under these special rules, the origin of a textile or apparel product is defined as the country in which a specific processing or assembly operation takes place.
- 5.3 The FTA does not define what textile and apparel articles are subject to the textile and apparel origin rules. In U.S. practice, however, textile and apparel origin rules are applied to all articles that are subject to the provisions of the WTO Agreement on Textiles and Clothing. These would include most of the articles that are classified under Chapters 50 to 63 of the Harmonized System. It also includes a few selected products classified in other chapters of the Harmonized System, such as pillows and quilts under Heading 9404; luggage under Heading 4202, if the outer surface is primarily of textile materials; and hats under Chapter 65 made of textile materials.
- 5.4 There are two components to the textile and apparel origin rules: a “**general rule**” (Annex 2.2., Article 9(a)) and “**special rules**” (Annex 2.2, Article 9(b)), which are exceptions to the general rule.

General Rule

- 5.5. The **general rule** of origin for textile and apparel articles is as follows:
 - ◆ If the imported good is **yarn**, then the origin is that country in which the constituent fibers are spun into the yarn.
 - ◆ Similarly, if the imported good is thread, twine, cordage, rope, cable, or braiding, the country of origin is that country in which the constituent fibers are spun or the constituent fibers are extruded, as the relevant manufacturing technology requires.
 - ◆ If the imported good is **fabric**, then the origin is that country in which the individual yarns, fibers or filaments were combined (by a process of weaving, knitting, or otherwise) to form the imported fabric.

- ◆ If the imported good is **clothing or other finished article**, then the origin is that country in which the article was *wholly assembled* by sewing and/or tailoring of all the cut component pieces of fabric into the imported garment (for example, the complete assembly and tailoring of all cut pieces of a suit-type jacket, suits, or shirts).
- ◆ A garment that is not “wholly assembled” in one country would not qualify under this rule. The FTA does not provide a definition of the phrase “wholly assembled.” However, it may require that both the assembly of all sub-components (such as sewing a cuff to a sleeve to form an arm to a shirt) as well as the sewing all sub-components together to form the finished garment would be required to take place in one country.

Examples

1. The imported article is a men’s T-shirt made of 100% knit cotton. The fabric for the T-shirt is knit and cut in China. The component pieces are shipped to the United States, where they are sewn together to form the finished T-shirt. The country of origin of the T-shirt is the United States, where the T-shirt is wholly assembled from its component parts.
2. The imported article is a long-sleeve dress shirt made of woven cotton fabric. The fabric is woven in China, where the finished fabric is also cut into 35 component parts (collar panels, right and left panels, rear panel, sleeves, *etc.*). These component parts are shipped to the U.S. In the U.S., the component parts are sewn together to form the shirt, buttonholed, and packaged for export to Jordan. The country of origin in the United States, where the finished shirt is wholly assembled.
3. The same shirt is cut into 35 component parts in China. However, in China, the collar and cuffs of the shirt are sewn together from cut panels, interlinings, and stays. These collar and cuff sub-components are shipped to the U.S. with the other components of the shirts for final assembly. If these minor sub-components are disregarded, the country of origin of the shirt would be the U.S.

Exceptions

Articles Produced from Yarns/Articles Produced from Fabric (Article 9(a)(i))

- 5.5 The first exception to the general rules applies to the textile and apparel products described in the list below. This exception applies a stricter rule of origin for the listed products than the general rules.
- 5.6 If the imported article falls on this list, then its country of origin will be that country in which the individual yarns are spun (articles of Heading 5609) or the country in which those yarns are formed into a fabric (articles of the remaining headings on the list below).
 - 5.6.1 The reason for this exception is that these articles are generally complete for their intended commercial use once the fabric is formed. Once the fabric is formed, only minor finishing operations (cutting to length or width or hemming, for example) are required to complete these kind of articles.
- 5.7 The articles subject to this exception are as follows:

Tariff Code	Product Description
5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables nesi
5807	Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered
5811	Quilted textile products in the piece, composed of one or more layers of textile materials assembled with padding by stitching or otherwise, other than embroidery in the piece, in strips or in motifs
6209.20.50.40	Cotton diapers for babies
6213	Handkerchiefs
6214	Shawls, scarves, mufflers, mantillas, veils and the like
6301	Blankets and traveling rugs
6302	Bed linen, table linen, toilet linen and kitchen linen
6304	Bedspreads, furnishings
6305	Sacks and bags of a kind used for packing goods
6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods
6307.10	Floorcloths, dustcloths, dusters and similar cleaning cloths
6307.90	Labels, cords, tassels, corset and footwear lacings, toys for pets, wall banners, surgical towels, surgical drapes, tufted towels, pillow shells, quilt and comforter shells, national flags, moving pads, and other made-up textile articles not specifically provided for elsewhere in the Harmonized System
6308	Needlecraft sets consisting of woven fabric and yarn, whether or not with accessories, for making up into rugs, tapestries, embroidered tablecloths or napkins, or similar textile articles, put up in packings for retail sale
9404.90	Bedding articles (pillows, cushions, quilts, comforters)

Examples

1. The imported article is a tent (Heading 6306). In Taiwan, yarn is woven into fabric, and that fabric is then cut into tent panels, dyed and coated. These panels are then shipped to the United States. In the U.S., the panels are sewn together to form the finished tent that is exported to Jordan. The tent is thus wholly assembled in the U.S. Nevertheless, the country of origin is Taiwan, the origin of the fabric panels.
2. The imported article is a three-piece woven bed sheet set, which includes one flat sheet, one fitted sheet, and one pillowcase (Heading 6302). The fabric is woven, dyed and printed in Pakistan, and then shipped to the United States. In the U.S., the fabric will be cut into various lengths for twin, full and queen size beds and hemmed. The country of origin is Pakistan, the country where the fabric was formed. The operations performed in the U.S. are merely finishing operations and are disregarded.

5.8 In certain cases, articles on this list may undergo significant additional processing after the fabric has been formed. Accordingly, as discussed

further below (sections 5.11 to 5.16), if the fabric is formed in one country but dyed, printed, and subject to two or more specified finishing operations in the United States, the U.S. may be considered the country of origin under Article 9(b)(iii) or (iv).

Articles Knit to Shape (Article 9)(b)(ii))

5.9 The country of origin of knit-to-shape products is the country in which the parts are knitted or crocheted directly to the shape used in the finished product.

5.10 According to U.S. Customs explanatory materials, the term "knit-to-shape" means:

"that the panels or parts (not including parts such as collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim or similar parts) are knit to the shape used in the final assembly process (rather than knit into a tube or blanket of material that is cut to shape). Minor cutting, trimming or sewing does not affect whether component materials are knit to shape. Knit-to-shape applies when 50 percent or more of the exterior surface area (not including patch pockets, appliques, etc.) is formed by major parts that have been knitted or crocheted directly to the shape used in the good."

Example

The imported goods are knit gloves and mittens made out of acrylic or wool yarn. In Taiwan, the gloves and mittens are knit using jacquard circular machines. The articles are shipped to the United States where they are separated piece by piece, finger-jointed, hand-closed and brushed. The gloves are then steamed, inspected and packaged for export to Jordan. The country of origin of the gloves is Taiwan, where they are knit to shape.

Dyeing and Printing Plus Multiple Finishing Operations (Article 9(b)(iii))

5.11 As noted above, the general rules define the country of origin of garments and other finished textile articles as the country in which the garment or finished article is "*wholly assembled*" from the fabric components. As also noted, the country of origin of certain specified articles is the country where the fabric is formed.

5.12 The FTA allows for exceptions to these requirements with respect to the apparel and textile articles listed in the table below if they have undergone significant processing after the fabric was formed.

5.13 Goods listed in the table, even if not wholly assembled in the U.S., or even if the fabric is not formed in the U.S., will be eligible for duty-free treatment *if* the fabric is both dyed and printed AND undergoes two or more specified operations in the U.S.

5.13.1 This exception applies only to the articles listed in the table below if such articles are not made either of wool or cotton or not made of fiber blends containing 16% or more by weight cotton.

5.14 The required processing for such products is the following:

The fabric used in garment or article is printed AND dyed



The fabric is subjected to two or more of the following finishing operations:

- ◆ Bleaching
- ◆ Shrinking
- ◆ Fulling
- ◆ Napping
- ◆ Decating
- ◆ Permanent stiffening
- ◆ Weighting
- ◆ Permanent embossing
- ◆ Moirering

5.15 The products that are eligible for this exception are as follows:

Tariff Code	Product Description
6117.10	Knitted or crocheted shawls, scarves, mufflers, mantillas, veils and the like
6213.00	Handkerchiefs, not knitted or crocheted
6214.00	Shawls, scarves, mufflers, mantillas, veils and the like, not knitted or crocheted
6302.22	Printed bed linen, not knitted or crocheted, of man made fibers
6302.29	Printed bed linen, not knitted or crocheted, of other textile materials (but not cotton)
6302.52	Table linen made of flax
6302.53	Table linen made of man-made fibers
6302.59	Table linen made of other textile materials (but not cotton)
6302.92	Toilet and kitchen linen made of flax
6302.93	Toilet and kitchen linen made of man-made fibers
6302.99	Toilet and kitchen linen made of other textile materials (but not cotton)
6303.92	Curtains (including drapes) and interior blinds, and curtain or bed valances, not knitted or crocheted and made of synthetic fibers
6303.99	Curtains (including drapes) and interior blinds, and curtain or bed valances, not knitted or crocheted and made of other textile

Tariff Code	Product Description
	materials (but not cotton)
6304.19	Bedspreads
6304.93	Furnishing materials other than blankets and traveling rugs, bedspreads, or those kind of articles that are listed above from Headings 6302-6303, made of synthetic materials and not knitted or crocheted
6304.99	Furnishing materials other than blankets and traveling rugs, bedspreads, or those kind of articles that are listed above from Headings 6302-6303, made of synthetic materials and not knitted or crocheted
9404.90.85	Quilts, eiderdowns, comforters and similar articles (but not cotton)
9404.90.95	Bedding articles, other than mattresses, or pillows, cushions and similar furnishing or quilts, comforters and similar articles (but not of cotton)

Dyed and Printed Fabrics (Article 9(b)(iv))

- 5.16 The general rules define the origin of fabric as that country in which the individual yarns, fibers or filaments were combined (by a process of weaving, knitting, or otherwise) to form the finished fabric.
- 5.17 An exception to this general rule is provided for fabric classified for tariff purposes as silk, cotton, man-made fiber, or vegetable fiber. With respect to such fabrics, a substantial transformation will be recognized if the fabric (regardless where it is formed) undergoes the following processing in the United States:

The fabric is both dyed and printed in the U.S.



The fabric is also subjected to two or more of the following finishing operations in that country:

- ◆ Bleaching
- ◆ Shrinking
- ◆ Fulling
- ◆ Napping
- ◆ Decating
- ◆ Permanent stiffening
- ◆ Weighting

- ◆ Permanent embossing
- ◆ Moirering

Examples

The imported article is a 100% silk scarf. The fabric was formed and cut in China, and shipped to the United States. In the U.S., the fabric was dyed, printed and hemmed to form the finished scarf that was exported to Jordan. The country of origin is China, the country where the fabric was formed. Although the scarf was dyed and printed in the U.S., it did not undergo any of the finishing operations required to convert the scarf to a U.S. origin product.

“Multicountry” or Fall Back Rule (Article 9(c))

5.18 In some cases, a determination of country of origin cannot be made through application of the general or the special rules.

Examples

1. The imported article is a coat. The right half of a coat is assembled in one country, and the left half of the coat is assembled in a different country. The two halves are shipped to the United States, where they are sewn together and exported to Jordan.
2. The imported article is a tent classified under Heading 6306. The fabric for the roof and floor of the tent are produced in one country. The fabric for the floors is produced in a second country. In the United States, all the fabrics are cut and sewn together.

5.19 In such cases, a residual or fall-back rule is required in order to determine country of origin of the imported good. This residual rule provides that the country of origin is that country in which the most important assembly or most important manufacturing operation takes place.

- This is a decision that must be made on a case-by-case basis.

5.20 If the most important assembly or manufacturing operation cannot be determined, then the country of origin is the last country in which an important assembly or manufacturing operation occurred.

Chapter 6: 35% Domestic Content Requirement

"1. This Agreement shall apply to any article if:

(b) the sum of

- (i) the cost or value of the materials produced in the exporting Party, plus
- (ii) the direct costs of processing operations performed in the exporting Party

is not less than 35 percent of the appraised value of the article at the time it is entered into the other Party

...

6. For purposes of determining the 35 percent domestic content requirement under this Agreement, the cost or value of materials which are used in the production of an article in one Party, and which are products of the other Party, may be counted in an amount up to 15 percent of the appraised value of the article. Such materials must in fact be products of the importing Party under the country of origin criteria set forth in this Agreement."

General

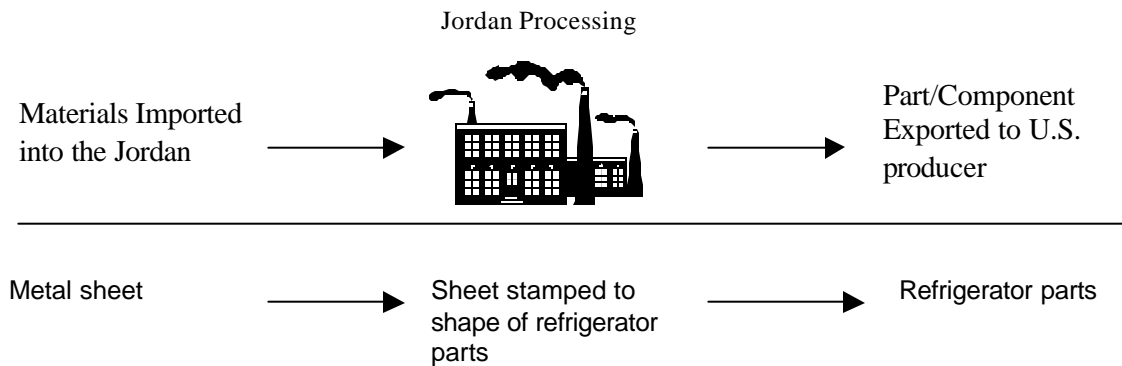
- 6.1 In addition to the qualitative test of origin (that is, the "wholly produced"/"substantial transformation" test), imported goods must meet a quantitative origin requirement to qualify for duty-free treatment under the FTA. This quantitative test is the 35% domestic content requirement.
- 6.2 Under the quantitative test, 35% of the customs value of the product imported into Jordan must be attributable to the cost or value of U.S.-origin materials and/or the direct costs of processing the product in the United States. A good can therefore qualify based on the value of U.S. materials alone, based on U.S. processing costs alone, or by a combination of U.S. materials and processing costs.
- 6.3 The calculation of the cost or value of U.S. materials is described in Chapter 7; and the definition of "direct costs of processing operations" is described in Chapter 8.

"Shared Production" or Accumulation Rule

- 6.4 The FTA includes a provision that allows the cost or value of any Jordanian-origin materials incorporated in the good to be counted in order to allow U.S. producers to more easily meet the 35% threshold. A purpose of the rule is to encourage U.S. or Jordanian producers to source from each other materials, parts and components needed for production, rather than from a third country, and thereby further intensify bilateral trade.
- 6.5 The accumulation rule allows a U.S. producer to count Jordanian origin materials toward the 35% threshold, but up to a limit of 15% of the customs value of the product exported to Jordan. The same "wholly

produced"/"substantial transformation" rule described in Chapters 3 and 4 will determine whether the materials are, in fact, Jordanian origin.

- 6.5.1 It is important to note, however, that such materials are NOT required themselves to meet the 35% domestic content requirement to qualify as a Jordan-origin material.



- ! Metal sheet is substantially transformed as a result of Jordan processing. Refrigerator parts have a name, character and use different than the imported materials. Accordingly, the U.S. producer of refrigerators can include the full cost or value of the Jordanian parts toward the 35% domestic content requirement.

This is true regardless of the amount of value added in Jordan. For example, even if 80 percent or more of the price of the parts sold by the Jordanian producer is attributable to the imported steel sheet, the full price of the parts shipped to the U.S. manufacturer can be included.

Chapter 7: Materials Produced in the Exporting Country

"1. This Agreement shall apply to any article if:

(c) the sum of

- (iii) the cost or value of the materials produced in the exporting Party, plus
- (iv) the direct costs of processing operations performed in the exporting Party

is not less than 35 percent of the appraised value of the article at the time it is entered into the other Party.

What are "Materials Produced in the Exporting Country"?

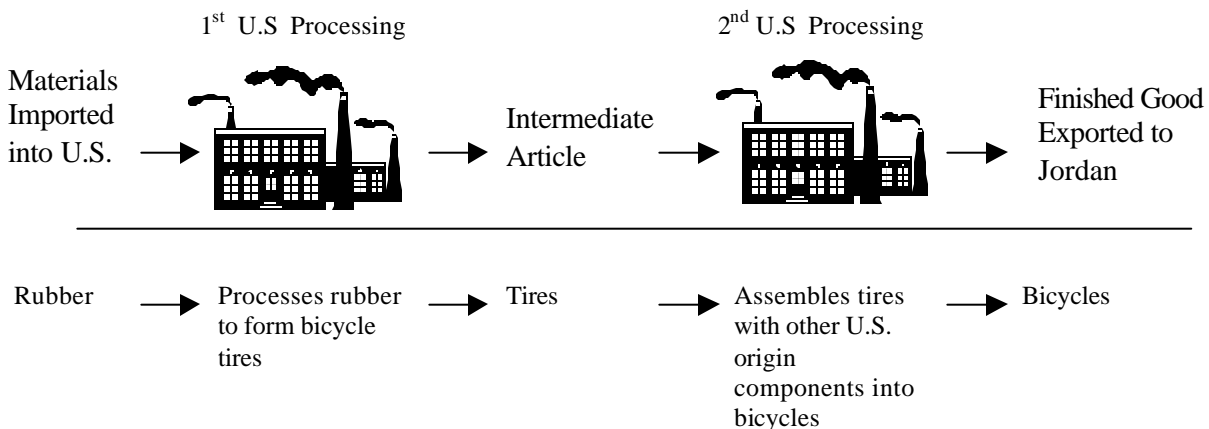
- 7.1 The cost or value of materials incorporated in the imported good may be counted toward the 35% domestic content requirement only if such materials are "produced in the exporting Party."
- 7.2 Although not defined in the FTA, the term "materials" has been applied in US Customs practice to include raw materials as well as parts, components, blanks, and subassemblies.
- 7.3 The test for determining whether such materials are "produced in the exporting Party" is the same test that Customs will use to determine whether the finished product is the growth, product or manufacture of a country. That is, materials will be considered produced in the exporting country if:
 - (i) The materials are wholly the growth, product or manufacture of the exporting country, or
 - (ii) The materials are substantially transformed in the exporting country into a new and different article of commerce, which is then incorporated into the finished good (a "**double substantial transformation**").

Double Substantial Transformation

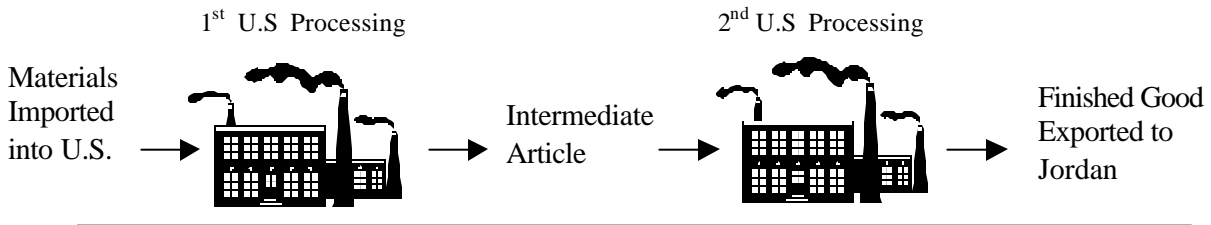
- 7.4 A U.S. firm might purchase parts and components from another U.S. manufacturer in order to produce the goods that it will export to Jordan. In some cases, the U.S. manufacturer may itself make the part or component. In either case, the parts and components may be made using imported materials. For example, a U.S. car manufacturer may import steel sheet to produce car parts (doors, bumpers, etc.), which it will use in the assembly of automobiles that will be exported to Jordan.
- 7.5 The full cost or value of the parts may be included toward the 35% domestic content requirement for the finished good only if the foreign materials used to manufacture the parts (the imported steel sheet in the example of the

automobile producer, above) undergoes a “double substantial transformation.”

- 7.6 That is, the non-U.S. origin material must be substantially transformed in the United States into a new and different article of commerce with a new name, character or use. This "substantially transformed constituent material" or intermediate article must then undergo a second substantial transformation when incorporated in the finished product that is exported to Jordan.
- 7.6.1 In the example of the automobiles above, the U.S. car manufacturer may include the cost or value of the bumpers and doors in the 35% domestic content calculation if: (i) the imported steel sheet is substantially transformed when converted into car parts, and (ii) those cars parts are themselves substantially transformed when incorporated into the automobile.
- 7.7 A single substantial transformation is not enough. An intermediate U.S.-origin part or component must first be created out of the non-U.S. material. If non-U.S. materials were substantially transformed directly into the final product, then the constituent materials used to produce the product would be foreign, not U.S., and could not be counted toward the 35% domestic content requirement.
- 7.8 Often, the question of double substantial transformation will arise in cases where a manufacturing operation (using foreign materials) is followed by an assembly operation. That is, the U.S. firm manufactures the parts required, and then assembles those parts into the final product. To qualify, both the manufacturing and the assembly operations must constitute a substantial transformation.

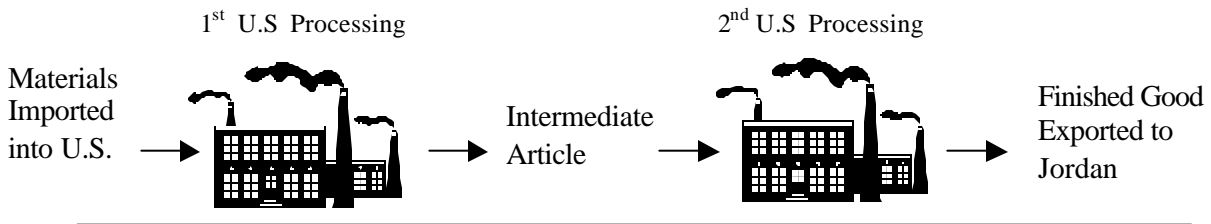


- ! The cost or value of the bicycle tires may be included the U.S. bicycle manufacturer toward the 35% domestic content requirement for the exported bicycles. The imported rubber undergoes the required double substantial transformation. First the rubber is converted into tires, a new and different article with a new name, character and use, and the tires themselves undergo a substantial transformation when combined with other components to produce the bicycles.



Spark-plugs, springs, washers, similar parts → 125 imported and U.S. origin parts combined into discrete subassemblies (e.g., fuel pump, oil pump, starter, etc.) → Gasoline engines → Attach gasoline engine and 20 other components to form a chain saw → Gas powered chain saws

! The imported parts undergo the required double substantial transformation. They are first substantially transformed when assembled into gasoline engines. They undergo a second substantial transformation when the engines are combined with other components to produce the chain saws.



Plastic pellets and bulk chemicals → Pellets are melted and extruded into molds to form plastic parts for toys. → Plastic parts for dolls and other toys → Assembly of plastic parts and U.S. origin materials (textiles, fasteners, etc.) into dolls and other toys → Dolls and other toys

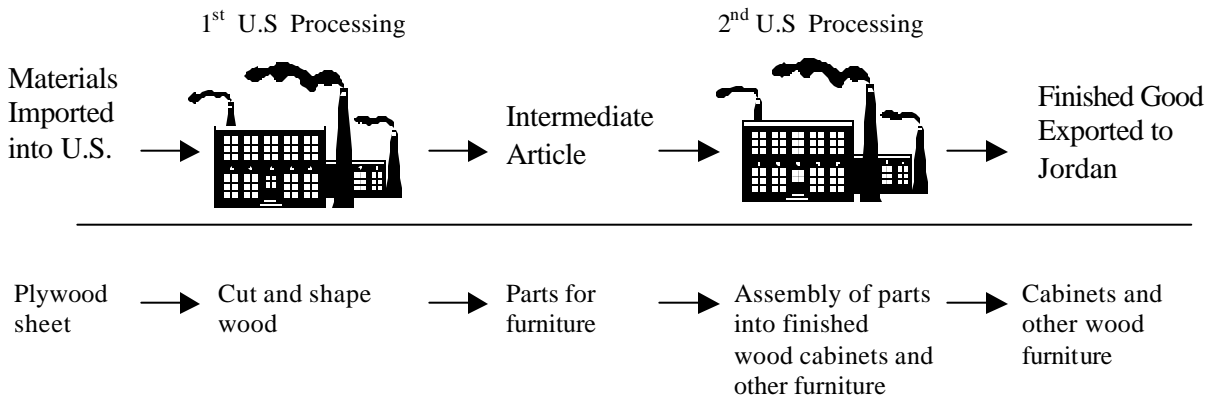
! The imported material undergoes the required double substantial transformation. The imported raw materials (bulk chemicals and plastic pellets) are substantially transformed when used to produce plastic parts for toys, and those parts are themselves substantially transformed when assembled with other components to form the finished dolls and toys.

Double Substantial Transformation - Article of Commerce Criteria

7.9 In addition to a double substantial transformation, the intermediate product (such as the tires and gasoline engine in the examples given above) must be

an "article of commerce" in order for its cost or value to be included in the 35% domestic content computation.

- 7.10 This means that the intermediate article must be one that is actually traded or ready to be put into the stream of commerce. The reason for this requirement is to prevent a manufacturer from artificially stopping a production process mid-stream in order to "find" a substantially transformed constituent material to count toward the 35% domestic content requirement.



- ! The operations result in a double substantial transformation of the plywood sheet. The intermediate articles (parts for furniture) are considered "articles of commerce" based on commercial magazines which show them of a kind offered for sale.

Calculation of Cost or Value of Materials

"6. (a) For purposes of this Agreement, the cost or value of materials produced in a Party includes:

- (i) the manufacturer's actual cost for the materials
 - (ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant,
 - (iii) The actual cost of waste or spoilage (material list) less the value of recoverable scrap, and
 - (iv) Taxes and/or duties imposed on the materials by a Party, provided they are not remitted upon exportation.
- (b) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:
- (i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses,
 - (ii) An amount for profit, and
 - (iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(c) If the pertinent information is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

Materials Purchased by the Exporter

- 7.11 The cost or value of constituent material is calculated differently depending whether the U.S. producer purchases the material from a third-party or produces the material himself.
- 7.12 If the U.S. producer purchases the materials for production of the exported goods, the value of those materials is the purchase price for the materials, plus costs of transporting the materials to the gate of the U.S. producer's factory (including any related packing, insurance, and other charges, such as handling charges or broker's fees), waste generated in production of the final product, and taxes and customs duties paid on the materials and not refunded upon export of the finished product (*i.e.*, drawback)

Materials Produced by the Exporter

- 7.13 If the U.S. manufacturers produces intermediate articles (such as parts or components) that the manufacturer then uses in its production of the final product that is exported to Jordan, the value of the self-produced materials is their cost of production plus profit. If the manufacturing facility for the intermediate articles has a different location than the facility where the final exported goods are produced, then the cost of transportation between the two locations may also added.
- 7.14 This might occur, for example, where the manufacturer is a vertically-integrated producer, or an entity that produces goods for export from materials which that producer has also made.

Chapter 8: Direct Costs of Processing

"7. (a) For purposes of this Agreement, direct costs of processing operations performed in a Party mean those costs either directly or indirectly incurred in, or which can be reasonably allocated to, the growth, production or manufacture, or assembly, of the specific article under consideration. Such costs include, but are not limited to the following, to the extent that they are includible in the appraised value of articles imported into a Party:

- (i) all actual labor costs involved in the growth, production, manufacture, or assembly, of the specific article, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel.
 - (ii) dies, molds, tooling and depreciation on machinery and equipment which are allocable to the specific article;
 - (iii) research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific article; and
 - (iv) costs of inspecting and testing the specific article.
- (c) Those items that are not included as direct costs of processing operations are those which are not directly attributable to the articles or are not costs of manufacturing the product. These include, but are not limited to:
- (i) profit; and
 - (ii) general expenses of doing business which are either not allocable to the specific article or are not related to the growth, production, manufacture, or assembly of the article, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses."

What are "Direct Costs of Processing"?

- 8.1 Direct costs of processing includes all labor, machinery and factory costs that are directly related to production of the imported good.
- 8.2 The phrase "direct cost" is intended to indicate that the cost must have a close relationship to production to be included in the 35% domestic content calculation. Article 7 of Annex 2.2, quoted above, provides guidance as to the costs that will be considered direct. In general, the closer the relation the cost has to the production line or factory floor, the more likely it is considered "direct."

Labor Costs

- 8.3 Whether a particular labor cost is considered a "direct cost of processing" is generally determined by the function the employee performs. Costs of workers directly engaged in production of the imported article are included, whereas costs of employees who perform only administrative functions (such as accountants or general manager) are not. Similarly, costs of labor

provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the production process would also be included, as would costs of labor for inspecting and testing the goods.

- 8.4 If an employee is directly engaged in production, then all costs associated with that employee may be included in the "direct costs of processing." These costs may include, for example, salary, overtime, social security and payroll taxes, group insurance, vacation pay and other benefits.

Production Equipment

- 8.5 All costs of tools, dies, molds, machinery and other equipment directly used in production of the imported goods may be included as a "direct cost of processing." Inspection and testing equipment required for production of the imported goods may also be included.
- 8.6 Depreciation expenses on machinery and equipment used in production of the goods can be included toward the 35% domestic content requirement. Similarly, the cost of maintenance, repair or modification of equipment used in production of the imported goods is considered a "direct cost of processing".
- 8.7 While casualty and liability insurance are not considered direct costs of processing, the costs of property insurance covering machinery and equipment used in the production process may be included as direct processing costs.

Utilities and Rent Costs

- 8.8 A producer may incur costs for services necessary for both production as well as its administrative offices or other separate functions. To the extent that a "reasonable allocation" of these costs can be made to production operations, it can be included as a direct cost of processing. Whether a particular method of allocation is "reasonable" can be determined, for example, by reference to generally accepted accounting principles.
- 8.9 Accordingly, the costs of utilities, such as electricity and water, are direct costs of processing to the extent that they are actually used in the production process. For example, the pro-rata share of the cost of electricity used to light or cool the work area where the imported goods are manufactured would be considered a direct cost of processing, but costs of electricity to light or cool administrative offices would not be.
- 8.10 Similarly, rent on that portion of the building space directly used in the processing operations is considered a direct processing cost, but rent for building space used for personnel offices, accounting departments and other administrative functions would not be so considered.

Examples

Direct Costs of Processing	Not Direct Costs of Processing
Salaries/wages of production line employees	Salaries/wages of general manager, payroll, accounting department employees
Social security, payroll taxes, vacation, medical benefits, bonuses for production line employees	Social security, payroll taxes, vacation, medical benefits, bonuses for general manager, personnel manager, accounting and payroll employees
	General office expenses, mail costs, and telecommunication costs
Cost of electricity to light and run production machinery and equipment	Cost of electricity to light administrative offices and run office equipment
Depreciation on production equipment and tools	Depreciation on company's automobiles
Pro-rata share of rent applicable to factory	Pro-rata share of rent applicable to administrative offices
Water for processing operations	Water for administrative staff
Cost of property insurance covering machinery and equipment used in production	Cost of casualty and liability insurance

Chapter 9: Direct Shipment Requirement

1. "This Agreement shall apply to any article if:

...

(b) that Article is imported directly from one Party to the other Party.

...

(8) For purposes of this Agreement, 'imported directly' means:

(a) direct shipment from one Party into the other Party without passing through the territory of any intermediate country; or

(b) if shipment is through the territory of an intermediate country, the articles in the shipment do not enter the commerce of any intermediate country and the invoices, bills of lading, and other shipping documents, show the other Party as the final destination, or

(c) if shipment is through an intermediate country and the invoices and other documents do not show the other Party as the final destination, then the articles in the shipment, upon arrival in that Party are imported directly only if they

(i) remain under control of the customs authority in an intermediate country;

(ii) do not enter the commerce of an intermediate country except for the purposes of a sale other than at retail, provided that the articles are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the article in good condition."

Purpose of Direct Transport Rule

9.1 The direct shipment rule is intended to reinforce the country of origin requirements of the FTA. By requiring goods to be shipped directly from the United States to Jordan, without transshipment through a third country, the rule reduces the chance that eligible goods will be mixed with non-eligible goods.

9.2 However, due to exigencies of trade, it is not possible in all circumstances to ship directly from one country to another, without passing through a third. For that reason, the FTA general direct shipment rule has 2 exceptions. The general rule and its two exceptions are described below.

Three Permitted Shipments

9.3 The FTA "direct shipment" rule allows the following three kinds of shipments:

- ◆ The U.S. exporter ships the goods directly to Jordan without passing through any other country. This would include direct air flights from the U.S. to Jordan and ocean shipments direct from the U.S. to the port of Aqaba.
- ◆ The U.S. exporter ships the goods to Jordan via third countries. The shipping documents (invoice, bills of lading) accompanying the shipment must show Jordan as the final destination, and the goods must not enter the commerce of the third countries en route. Generally, this means that the shipment must remain under customs control (under a customs transit procedure, for example) when passing through the third countries. This would include, for example, air or ocean shipments from the U.S. to European or Gulf countries which are then carried by truck or rail in-transit or under TIR Carnet to Jordan on a through bill of lading.
- ◆ The U.S. exporter ships the goods to a third country, where the goods are placed in a customs warehouse or a customs-controlled free trade zone prior to shipment to Jordan. The goods may not be processed or manipulated while in the third-country, except for operations that may be necessary to preserve the goods.
 - ◆ Examples of permitted activities necessary to preserve the goods might include (i) removal of dust that accumulates during shipment, (ii) ventilation, (iii) replacing damaged packing materials and containers, or (iv) removal of units of the good that are spoiled or damaged and present a danger to the remaining units in the shipment.

Example

An U.S. manufacturer ships aluminum car wheels by ocean container to Hamburg, Germany for delivery to Jordan by truck. In Germany, the aluminum wheels will be unloaded from containers and transferred to a customs bonded warehouse, where the wheels will be inspected for transportation damage. If any damage is found, the wheels may be sanded, painted, deburred, and polished. The wheels will then be loaded back into the containers and shipped to Jordan.

The wheels are NOT imported directly. The operations performed in the warehouse in German exceed those permitted to "preserve the article in good condition."

- ◆ In addition to remaining under customs control, the goods may not "enter the commerce" of the intermediate country. Generally this means that the goods may not be sold or offered for sale while in that intermediate country.
 - ◆ The only exception to this "no sale" rule is where the sale is one other than at retail, and "the articles are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent." The language of this exception is taken from the U.S. Customs regulations applicable to

the Generalized System of Preferences. In that context, the exception was intended to describe a very specific type of transaction, that is, the method by which Cameroon tobacco is typically marketed. The exception may have limited or no application under the U.S.-Jordan FTA.

Chapter 10: Special Origin Problems

10.1 Certain origin questions that typically arise in application of preferential trade agreements are not answered by the text of the FTA or its annexes. The Jordan Customs Department, by itself or in consultation with U.S. Customs Service, will be required to resolve these open questions as the agreement is implemented. In that regard, Article 11 of Annex 2.2 provides that the Parties to the Agreement (Jordan and the U.S.) will

"consult from time to time on the interpretation of these provisions and on any practical problems which may arise with a view to prevent unnecessary barriers to trade which are inconsistent with the objectives of the Agreement."

10.2 Similarly, Article 14 of the Agreement provides that the Parties will within 180 days of entry into force of the Agreement "enter into discussions with a view to developing interpretative and explanatory materials on the implementation of Annex 2.2."

The unresolved issues include the following:

De Minimis Exception

The text of the FTA origin rules make no exception for minor elements that might be incorporated within an otherwise eligible product, but do not undergo the required substantial transformation. For example, as noted in Chapter 5, above, the general origin rule for clothing requires the garment to be "wholly assembled" in the United States to qualify for duty-free entry into Jordan. However, there may be cases where minor elements are added in a third country (such as sewing buttons to a sleeve) to a garment that is otherwise wholly assembled in the U.S. The question is whether that minor processing will disqualify the otherwise-eligible garment from duty-free treatment.

Sets

A set is a collection of separate articles that is packaged together for retail sale. As indicated in Chapter 4 (above), Article 2 of Annex 2.2 expressly provides that packaging operations cannot be considered a substantial transformation.

However, the same origin issue described under the "de minimis" section often occurs with respect to sets. That is, in certain cases, one or a few minor items may be included in the set and may have an origin that is different than that of the rest of the items.

Example

The imported article is a "Junior Science Laboratory Kit," a chemistry kit for children. It consists of over 60 separate items, including a microscope, test tubes, measuring spoons, chemicals etc. All but two items are U.S. origin. These are a plastic magnifying glass and a plastic slide, which are made in Taiwan. These two items account for only 3% of the total value of the kit.

The question is whether 100% of the items included within the set must be "the growth, product or manufacture" of the United States in order to for the set as a whole to qualify for duty-free import into Jordan.

Spare Parts, Accessories and Tools

Particularly in the case of machinery, vehicles and equipment, the manufacturer may supply spare parts, accessories or tools with the goods. For example, an automobile manufacturer may supply a spare tire with exported cars, or a computer manufacturer may provide an additional power cord with exported notebook computers. If the spare part, accessory or tool is not U.S. origin, will its inclusion disqualify otherwise eligible goods?

Chapter 11: Import Procedures

"10. Whenever an importer enters an article as eligible for the preferential treatment provided by this Agreement

- (a) the importer shall be deemed to certify that such article qualifies for the preferential treatment provided by this Agreement.
- (b) The importer shall be prepared to submit to the customs authorities of the importing country, upon request, a declaration setting forth all pertinent information concerning the production or manufacture of the article. The information on the declaration should contain at least the following pertinent details:
 - (i) a description of the article, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;
 - (ii) a description of the operations performed in the production of the article in a Party and identification of the direct costs of processing operations;
 - (iii) a description of any materials used in production of the article which are wholly the growth, product or manufacture of either Party, and a statement as to the cost or value of such materials
 - (iv) a description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the article which are claimed to have been sufficiently processed in a Party so as to be materials produced in that Party; and
 - (v) a description of the origin and cost or value of any foreign materials used in the article which have not been substantially transformed in a Party.

This declaration shall be prepared, signed, and submitted by the importer upon request by the importing Party. A declaration should only be requested when the importing Party has reason to question the accuracy of the certification that, by operation of subparagraph (a), is deemed to have occurred, or when the importing Party's procedures for assessing the risk of improper or incorrect entry of an imported article indicate that verification of an entry is appropriate, or when a random verification is conducted. The information necessary for the preparation of the declaration shall be retained in the files of the importer for a period of 5 years.

Import Procedures

- 11.1 The FTA introduces a new concept in Jordan Customs' practice with respect to the processing of import declarations. When an importer now claims duty-free treatment (under the Arab region bilateral agreements, for example) he is required (1) to mark a particular code in Box 36 of the Customs Declaration form to indicate that the goods are imported under the preferential trade agreement, and (2) present to Customs a paper copy of a signed country of origin certificate. In general, Customs requires that the foreign exporter and an authority in the exporting country sign this form.
- 11.2 The FTA eliminates the requirement of an origin certificate. Instead, the importer will **"self-certify"** that the goods are eligible for duty-free treatment. That is, the importer is required only to mark the Customs Declaration form to indicate that the goods are imported duty-free under the FTA. By doing so, the importer is "deemed" to have made a certification that the goods meet all FTA rules of origin and other requirements and qualify for duty-free treatment. No origin

certificate is required. Certification or signatures by the foreign producer or exporter, or any authority in the foreign country, are not required and should not be requested by Customs.

11.3 Although the importer is not required to present an origin certificate, in certain specific cases Customs may request the importer prepare, sign and submit a detailed "declaration." The circumstances in which Customs may request this declaration are as follows:

- ◆ Where Customs has reason to question the accuracy of the importer's claim for duty-free treatment under the FTA
- ◆ Where Customs, applying risk criteria, determines that further verification of the importer's claim for duty-free treatment is warranted (*i.e.*, where imports are yellow or red channel due to risk of false or incorrect claims for duty-free treatment)
 - ◆ It would not be appropriate to request a declaration with respect to shipments that are yellow or red channel for other reasons (health, safety, incorrect tariff classification, etc.).
- ◆ Where Customs conducts a random verification

As a matter of course, therefore, Customs should not require a declaration from the importer.

11.4 The information that is required to be included in the declaration is listed in Article 10(b) of Annex 2.2. The following is a model declaration which might be used for this purpose. This model is based on the declaration form used in U.S. Customs' practice with respect to GSP claims.

Model FTA Declaration

DECLARATION

I, _____ (name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and incorporate materials produced in the country named above:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials Produced in Jordan or the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

Information Required to be Kept by Importers

11.5 The importer is required to keep all information necessary to prepare the declaration described above. It should be noted in particular that the importer will have an obligation to obtain information from the foreign producer about the foreign processing operation in order to prepare the declaration.

11.6 Typically, the documents that an importer is required to keep will include:

- ◆ Commercial invoice
- ◆ Contract
- ◆ Bill of lading or other shipping documents
- ◆ Notes and correspondence with foreign producer

11.7 The information is required to be kept for a period of five years "in the files of the importer." This is intended to ensure that the information is available to the Jordan Customs Department if required for verification.

- 11.8 The obligation of the importer is to keep "information" rather than "records." This suggests that the importer is not required to obtain or retain original documents (many of which, presumably, would be in the control of the foreign producer), but the information from the documents only.
- ◆ Because Annex 2.2. refers to "information" rather than documents, the FTA would allow the information to be kept by electronic or other alternate forms of storage rather than on paper. Whether this is permitted, however, may depend upon Jordan's legislation (such as its rules of evidence).
- 11.9 The five-year period is based on the statute of limitations for customs fraud claims under U.S. law. The FTA does not indicate whether this five-year period begins the date the importer files his declaration with Customs, the date the importer prepares and signs the declaration, or some other date.
- 11.10 The FTA provides no penalty for failure to keep the required information. At a minimum, however, Customs would be justified in disallowing the importer's claim for duty-free treatment if the importer failed to produce the information required to support his declaration.

Chapter 12: Resources

How to Find U.S. Customs Service Rulings

Step 1

Go to the U.S. Customs Service Home Page. The address is

<http://www.customs.ustreas.gov>

Click on "Importing and Exporting" on the list on the left.



Step 2

Scroll down the list of subjects to the category "Rulings and Regulations". Click on the subject "Ruling Letters Issued by the Office of Regulations and Rulings"

